File No. 20021-JJO

#### IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

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)	
)	
)	
)	Case No. 08 CV 1738
)	
)	Judge Matthew Kennelly
)	
)	Magistrate Judge Susan Cox
)	
)	
)	
)	

# MOTION FOR LEAVE TO WITHDRAW ITS ANSWER TO PLAINTIFF'S COMPLAINT, WITHDRAW ITS ANSWER TO REQUEST TO ADMIT NUMBER 32 AND FILE ITS AMENDED ANSWER TO REQUEST TO ADMIT 32, FILE ITS AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND AMENDED AFFIRMATIVE DEFENSES

NOW COMES the Defendant, Seneca Insurance Company, Inc., by and through its attorneys, O'Hagan Spencer LLC, respectfully request that this Court enter an Order withdrawing its Answer to Plaintiff's Complaint and its Answer to Request to Admit No. 32 and granting it leave to file an Amended Answer to Request to Admit 32, Amended Answer to Plaintiff's Complaint and Amended Affirmative Defenses, *instanter*. In support, the Defendant states:

- 1. On May 1, 2008, Defendant filed its Answer to Plaintiff's Complaint. *See,*Answer attached hereto as Exhibit "A".
- 2. In responding to Plaintiff's Requests to Admit, Interrogatories and Requests for Production and review of thousands of documents in answering the same, Defendant has learned that the roof collapse at issue in this matter is not a covered

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loss under the Policy.

- 3. Defendant now seeks leave to withdraw its Answer and file an Amended Answer to Plaintiff's Complaint to deny Paragraph 11 of the Complaint to clarify that the roof collapse is not a covered loss based on various inspection reports and correspondence from the Plaintiff's contractors in remedying the roof collapse.
- 4. The denial of Paragraph 11 is synonymous with Defendant's Answers to Plaintiff's Request to Admit, which were served on Plaintiff on June 6, 2008. See, Answers to Requests to Admit attached as Exhibit "B".
- 5. Furthermore, Defendant seeks leave to Amend its Answer to Paragraph 18 of Plaintiff's Complaint because Vishnu Gor provided three days of Examinations Under Oath ("EUO") not two as stated in Paragraph 18 of Plaintiff's Complaint. Specifically, Plaintiff had examinations under oath on March 9, 2004, March 10, 2004 and May 8, 2006.
- 6. Finally, Defendant seeks leave to Amend its Answer to Paragraph 19 of Plaintiff's Complaint and its Amend Defendant's Answer to Plaintiff's Request to Admit No. 32, because Defendant has paid Plaintiff a total amount of \$154,834 and the Answer to Plaintiff's Complaint and Request to Admit No. 32 state that Defendant has not paid more than \$150,000 to Plaintiff.
- 7. The Defendant, by the present Motion, also seeks to Amend its Affirmative Defenses and add the Affirmative Defense that Plaintiff failed to mitigate damages, as required by the Insurance Policy. Again, after review of the numerous documents in answering discovery, Defendant has discovered that failure to mitigate damages is an additional affirmative defense available to

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Defendant under the Policy.

WHERFORE, the Defendant, Seneca Insurance Company, Inc., requests that this Court enter an Order granting withdrawal of Defendant's Answer to Plaintiff's Complaint and withdrawal of Defendant's Answers to Requests to Admit No. 32 and granting Defendant leave to file an Amended Answer, Amended Affirmative Defenses and Amended Answer to Request to Admit number 32, *instanter*.

Respectfully Submitted:

#### SENECA INSURANCE COMPANY

s/ James J. O'Hagan ...
James J. O'Hagan (ARDC No. 2094754)
Jamie L. Filipovic (ARDC No. 6278943)
O'Hagan Spencer, LLC
One E. Wacker Drive
Suite 3400
Chicago, Illinois 60601
Telephone: (312) 422-6100

Facsimile: (312) 422-6110 E-mail: <u>johagan@ohaganspencer.com</u> ATTORNEYS FOR DEFENDANT

SENECA INSURANCE COMPANY, INC.

# EXHIBIT A

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Document 12

Filed 05/05/2008

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Case No. 08 CV 1738

#### IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

VJ COMPOUNDING CORPORATION, d/b/a	)	
L. CARLTON MERTZ, CO., an Illinois	)	
Corporation,	)	
Plaintiff,	)	Case No. 08 CV 1738
v.	)	Judge Matthew Kennelly
SENECA INSURANCE COMPANY, INC. a subsidiary of SENECA INSURANCE GROUP,	)	Magistrate Judge Susan Cox
INC. a Delaware Corporation,	)	
Defendant.	)	

#### SENECA INSURANCE COMPANY, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

**NOW COMES** the Defendant, Seneca Insurance Company, Inc., by and through its attorneys, O'Hagan Spencer LLC, and for its Answer to the Complaint filed by Plaintiff, V J Compounding Corporation, Defendant states as follows:

#### The Parties

1. Plaintiff, V J Compounding Corporation, d/b/a L. Carlton Mertz Co. (the "Plaintiff"), is an Illinois corporation duly licensed to do business in the State of Illinois and, until the incidents referenced herein, was conducting business at 6147 West 65<sup>th</sup> Street, Bedford Park, Illinois, 60636, as a manufacturer of industrial cleaning solutions. Plaintiff maintains it (sic) principal place of business at 9960 W. 191<sup>st</sup> Street, Unit K, Mokena, Illinois, 60448.

ANSWER: This Defendant has insufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations in Paragraph 1 of Plaintiff's Complaint, but demands strict proof thereof.

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2. Defendant, Seneca Insurance Company, Inc., a subsidiary for Seneca Insurance Group, Inc. (the "Defendant"), in (sic) a Delaware corporation with its principal place of business located in New York, New York.

ANSWER: This Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

#### Jurisdiction and Venue

3. The parties are of diverse citizenship.

ANSWER: This Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

ANSWER: This Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a).

ANSWER: This Defendant states that the allegations in Paragraph 5 of Plaintiff's Complaint call for a legal conclusion for which no answer is required. To the extent an answer is required; this Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The claims forming the basis of this Complaint, or a significant portion thereof, arose in that geographical area contained within the federal district known as the Northern District of Illinois. Specifically, the parties in substantial part entered into the insurance agreement which forms the basis of this Complaint in said District, and the covered loss which created Defendant's liability occurred in said District.

ANSWER: This Defendant states that the Insurance Agreement is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 6 to the extent they are not in accordance with the Agreement. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint,

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and therefore, does not admit or deny the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint, but demands strict proof thereof.

#### The Policy

- 7. Defendant issued to Plaintiff Commercial Property Insurance Policy No. ESP 14 024 50 (the "Policy"), effective October 1, 2003, through October 1, 2004. A true and correct copy of the Policy is attached hereto as Exhibit A.
- ANSWER: This Defendant admits that a true and correct copy of Policy No. ESP 14 024 50 is attached as Exhibit "A" to Plaintiff's Complaint. This Defendant further states that the Insurance Agreement is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint to the extent they are not in accordance with the Agreement.
- 8. At all times relevant hereto, Plaintiff was current on its premium obligations under the Policy.
- ANSWER: This Defendant admits the allegations contained in Paragraph 8 of Plaintiff's Complaint.
- 9. At all times relevant hereto, Plaintiff satisfied all of its obligations and conditions under the Policy.
- ANSWER: This Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

#### The Roof Collapse

- 10. On March 5, 2004, the roof of Plaintiff's facility at 6147 West 65<sup>th</sup> Street in Bedford Park, Illinois (the "Facility"), partially collapsed due to wind and heavy rainfall (the "Roof Collapse").
- ANSWER: This Defendant has insufficient information to admit or deny the allegations contained in Paragraph 10 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 10 of Plaintiff's Complaint, but demands strict proof thereof.
  - 11. The Roof Collapse is a covered loss under the terms of the Policy.

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ANSWER: This Defendant admits the allegations contained in Paragraph 11 of Plaintiff's Complaint.

The Claim

- 12. As a direct and proximate result of the Roof Collapse, Plaintiff incurred the following losses: (1) structural damage to the Facility, which Plaintiff owned; (2) loss of inventory located at the Facility; (3) business interruption with resultant loss; and (4) loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy.
- ANSWER: This Defendant denies Plaintiff's allegations contained in Paragraph 12 of Plaintiff's Complaint regarding loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 12 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 12 of Plaintiff's Complaint, but demands strict proof thereof.
- 13. Plaintiff notified Defendant of the Roof Collapse immediately upon its occurrence. Plaintiff notified Defendant through Defendant's local agent, Richard T. Scodro.
- ANSWER: This Defendant admits that Plaintiff notified Defendant through Defendant's local agent, Richard T. Scodro. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 13 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 13 of Plaintiff's Complaint, but demands strict proof thereof.
- 14. Plaintiff submitted to Defendant a sworn statement of loss not later than April 1, 2004.
- ANSWER: This Defendant denies that Plaintiff submitted a proper proof of loss.
  - 15. Plaintiff has supplied all information reasonably requested by Defendant.
- ANSWER: This Defendant denies the allegations contained in Paragraph of 15 of Plaintiff's Complaint.
- 16. Plaintiff has supplied Defendant with thousands of pages of documents requested by Defendant to support its claim, often resubmitting the same documentation two or three times.

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This Defendant admits that Plaintiff has supplied Defendant with thousands **ANSWER:** of pages of documents often resubmitting the same documentation two or three times. This Defendant denies the remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.

- Plaintiff, through its president and owner Vishnu Gor ("Mr. Gor"), has had 17. numerous meetings with Gregory A. Crapanzano ("Mr. Crapanzano") and other representatives of Defendant.
- This Defendant admits the allegations contained in Paragraph 17 of **ANSWER:** Plaintiff's Complaint.
- Mr. Gor has undergone two days of sworn deposition testimony at the request of 18. Defendant.
- This Defendant admits the allegations contained in Paragraph 18 of **ANSWER:** Plaintiff's Complaint.
- Defendant has paid Plaintiff not more than \$150,000 as a result of the Roof 19. Collapse, which is a small fraction of Plaintiff's covered loss under the Policy.
- This Defendant admits that it has paid Plaintiff not more than \$150,000 as a ANSWER: result of the Roof Collapse. This Defendant denies the remaining allegations contained in Paragraph 19 of Plaintiff's Complaint.
- 20. As a result of Defendant's wrongful refusal to pay the amount due under the Policy, Plaintiff was forced out of business with resulting and substantial additional loss.
- This Defendant denies the allegations contained in Paragraph 20 of ANSWER: Plaintiff's Complaint.

#### The Denial Letter

In a letter dated March 12, 2007, signed by Mr. Crapanzano (the "Denial Letter"), 21. Defendant advised Plaintiff that Defendant does "hereby deny coverage" under the Policy. A true and correct copy of the Denial Letter, as received by Plaintiff, is attached hereto as Exhibit B.

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ANSWER: This Defendant admits that a true and correct copy of the Denial Letter is attached hereto as Exhibit "B" to Plaintiff's Complaint. This Defendant further states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter.

- 22. In the Denial Letter, Defendant states as the basis for its denial as follows: "[Plaintiff] has violated the foregoing provisions of the Policy by failing to give costs, values and amounts of the losses claimed; provide books and records for examination; provide a proof of loss containing information requested to investigate the claim; return signed examination answers; and cooperate in the investigation of the claim." These statements are false.
- ANSWER: This Defendant states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter. This Defendant denies the remaining allegations contained in Paragraph 22 of Plaintiff's Complaint.
- Also in the Denial Letter, which is dated two years and one week after the date of the Roof Collapse, Defendant cites a provision of the Policy stating that, "[N]o one may bring a legal action against ("Defendant") under this Covered Part unless ... the action is brought within two years after the date on which the direct physical loss or damage occurred," and then states that "legal against [Defendant] is precluded because ... the time to file suit has expired."
- ANSWER: This Defendant states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter.
- 24. Defendant's claim of untimely filing of the instant action is false. Specifically, the Illinois Insurance Code, 215 ILCS 5/143.1, provides that any period of limitations in a policy such as the Policy is tolled from the date proof of loss is filed until the date the claim is denied in whole or in part.

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Case No. 08 CV 1738 20021-JJO

This Defendant states that the Illinois Insurance Code, 215 ILCS 5/143.1 is a **ANSWER:** written document that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint to the extent they are not in accordance with the Code. This Defendant denies the remaining allegations contained in Paragraph 24 of Plaintiff's Complaint.

Plaintiff demands trial by jury. 25.

This Defendant makes no response to Paragraph 25 of Plaintiff's Complaint ANSWER: as no response is required.

WHEREFORE the Defendant, SENECA INSURANCE COMPANY, INC., respectfully requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice and with costs, and/or such further relief as this Court deems just.

#### **AFFIRMATIVE DEFENSES**

- Plaintiff's Complaint fails to state a claim against Defendant upon which 1. relief can be granted.
- Plaintiff did not and has not satisfied the Conditions of the Policy No. ESP 14 2. 024 50, including, but not limited to, providing Defendant with proper documentation and a proper proof of loss as required by the Policy.

James J. O'Hagan James J. O'Hagan (ARDC No. 2094754) Jamie L. Filipovic (ARDC No. 6278943) O'Hagan Spencer, LLC One E. Wacker Drive **Suite 3400** Chicago, Illinois 60601 Telephone: (312) 422-6100 Facsimile: (312) 422-6110

E-mail: johagan@ohaganspencer.com

ATTORNEYS FOR DEFENDANT SENECA INSURANCE COMPANY, INC.

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2008, a copy of foregoing Defendant's, **Seneca Insurance Company, Inc.'s Answer to Plaintiff's Complaint,** was filed electronically and served by email to all parties as shown on the attached Service List by operation of the Court's electronic filing on this 5<sup>th</sup> day of May, 2008. Parties may access this filing through the Court's CM/ECF System.

/s/ James J. O'Hagan

Attorney for Defendants

James J. O'Hagan (ARDC No. 2094754) Jamie L. Filipovic (ARDC No. 6278943) O'Hagan Spencer LLC One E. Wacker Drive Suite 3400 Chicago, Illinois 60601

Telephone: (312) 422-6100 Facsimile: (312) 422-6110

#### SERVICE LIST

#### **Attorney for Plaintiff**

Timothy S. Harris Reed Smith LLP 10 S. Wacker Dr., Ste. 4000 Chicago, IL 60606

PH: (312) 207-2420 FX: (312) 207-6400 tharris@reedsmith.com Case 1:08-cv-01738 Document 18-2 Filed 07/03/2008 Page 10 of 10 Page 1 of 1

#### **Melissa Martinez**

From: usdc\_ecf\_ilnd@ilnd.uscourts.gov Sent: Monday, May 05, 2008 3:47 PM

To: ecfmail\_ilnd@ilnd.uscourts.gov

Subject: Activity in Case 1:08-cv-01738 VJ Compounding Corporation vs Seneca Insurance Company, Inc. answer to complaint

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#### Northern District of Illinois - CM/ECF LIVE, Ver 3.1.3

#### **Notice of Electronic Filing**

The following transaction was entered by O'Hagan, James on 5/5/2008 at 3:46 PM CDT and filed on 5/5/2008

Case Name:

VJ Compounding Corporation vs Seneca Insurance Company, Inc.

Case Number:

1:08-cv-1738

Filer:

Seneca Insurance Company, Inc.

**Document Number: 12** 

**Docket Text:** 

ANSWER to Complaint by Seneca Insurance Company, Inc.(O'Hagan, James)

#### 1:08-cy-1738 Notice has been electronically mailed to:

Timothy Scott Harris tharris@reedsmith.com

James J. O'Hagan johagan@ohaganspencer.com, mmartinez@ohaganspencer.com

#### 1:08-cv-1738 Notice has been delivered by other means to:

Alexander Terras Reed Smith LLP 10 South Wacker Drive 40th Floor Chicago, IL 60606

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename:n/a

**Electronic document Stamp:** 

[STAMP dcecfStamp\_ID=1040059490 [Date=5/5/2008] [FileNumber=4762864-0] [89f47958fec4da2559dd31ddbf2f7b0add880dab97e0c9bc10b54b8c5ba66c207812 5dcba9ac2280ef514b55e2b34ed73a4669fb43c2a77c48f2528202e52c52]]

## EXHIBIT B

20021-JJO

Case No. 08 CV 1738

## IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

VJ COMPOUNDING CORPORATION, d/b/a	)	
L. CARLTON MERTZ, CO., an Illinois	)	
Corporation,	)	
•	)	
Plaintiff,	)	Case No. 08 CV 1738
	)	
v.	)	Judge Matthew Kennelly
	)	
SENECA INSURANCE COMPANY, INC. a	)	Magistrate Judge Susan Cox
subsidiary of SENECA INSURANCE GROUP	<b>'</b> , )	
INC. a Delaware Corporation,	)	
-	)	
Defendant.	)	

### SENECA INSURANCE COMPANY, INC.'S ANSWERS TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT

NOW COMES the Defendant, Seneca Insurance Company, Inc., by and through its attorney's, O'Hagan Spencer LLC, and for its Answers to Plaintiff's First Set of Requests to Admit, Defendant states as follows:

#### **REQUESTS TO ADMIT**

1. Plaintiff is an Illinois corporation duly licensed to do business in the State of Illinois.

#### Answer:

After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 1 is insufficient to admit or deny the allegations in Paragraph 1, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 1 and demands strict proof thereof.

2. At the time of the Roof Collapse, Plaintiff was conducting business at 6147 West 65<sup>th</sup> Street, Bedford Park, Illinois, 60636, as a manufacturer of industrial cleaning solutions.

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 2.

3. Plaintiff currently maintains its principal place of business at 9960 W. 191st Street, Unit K, Mokena, Illinois, 60448.

Answer: After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 3 is insufficient to admit or deny the allegations in Paragraph 3, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 3 and demands strict proof thereof.

4. Defendant is a Delaware corporation with its principal place of business located in New York, New York.

Answer: Defendant denies it is a Delaware Corporation and admits the remaining allegations contained in the Request to Admit in Paragraph 4.

5. The parties are of diverse citizenship.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 5.

6. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 6.

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a).

### Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 7.

8. The claims forming the basis of this Complaint, or a significant portion thereof, arose in that geographical area contained within the federal district known as the Northern District of Illinois.

### Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 8.

9. The parties in substantial part entered into the Policy in that geographical area contained within the federal district known as the Northern District of Illinois.

### Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 9.

10. The covered loss which created Defendant's liability under the Policy occurred in that geographical area contained within the federal district known as the Northern District of Illinois.

# Answer: Defendant admits that Plaintiff's loss occurred in that geographical area contained within the federal district known as the Northern District of Illinois and denies the remaining allegations contained in the Request to Admit in Paragraph 10.

11. Defendant issued the Policy to Plaintiff.

### Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 11.

12. The coverage provided in the Policy was in place effective October 1, 2003, through October 1, 2004.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 12.

13. A true and correct copy of the Policy is attached to the Complaint as Exhibit A.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 13.

14. Plaintiff was current on its premium obligations under the Policy at all times relevant to the claims made by Plaintiff in the Complaint.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 14.

15. Plaintiff satisfied all of its obligations and conditions under the Policy at all times relevant to the claims made by Plaintiff in the Complaint.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 15.

16. The Roof Collapse occurred on March 5, 2004.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 16.

17. The Roof Collapse was caused by wind and heavy rainfall.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 17.

18. The Roof Collapse is a covered loss under the terms of the Policy.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 18.

19. Plaintiff was the fee simple owner of the Facility at the time of the Roof Collapse.

Answer: After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 19 is insufficient to admit or deny the allegations in Paragraph 19, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 19 and demands strict proof thereof.

20. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to structural damage to the Facility.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 20.

21. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to loss of inventory located at the Facility.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 21.

22. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to business interruption with resultant loss.

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 22.

23. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 23.

24. Plaintiff notified Defendant of the Roof Collapse immediately upon its occurrence.

Answer: Defendant admits the allegations contained in the Request to Admit in Paragraph 24.

25. Plaintiff notified Defendant of the Roof Collapse through Defendant's local agent, Richard T. Scodro.

Answer: Defendant admits that Richard T. Scodro, a broker, was notified and denies all other remaining allegations contained in the Request to Admit in Paragraph 25.

26. Plaintiff submitted to Defendant a sworn statement of loss not later than April 1, 2004.

Answer: Defendant admits Plaintiff submitted the attached proofs of loss dated April 1, 2004, exhibit 103, dated December 8, 2004, exhibit 102, and dated December 7, 2005, exhibit 100.

27. Plaintiff has supplied all information relating to the Roof Collapse reasonably requested by Defendant.

Answer: Defendant denies the allegations contained in the Request to Admit in Paragraph 27.

28. Plaintiff has supplied Defendant with thousands of pages of documents requested by Defendant to support its claim relating to the Roof Collapse.

Answer: Defendant denies the allegations contained in Request to the Admit in Paragraph 28.

29. Plaintiff, at the request of Defendant, has often resubmitting (sic) two or three times the same documentation in support of its claim relating to the Roof Collapse.

Answer: Defendant admits the duplication of documentation, but denies that it supports any loss in addition to what has been paid. Defendant denies the remaining allegations contained in the Request to Admit in Paragraph 29.

30. Plaintiff, through its president and owner, Mr. Gor, has had numerous meetings with Mr. Crapanzano and other representatives of Defendant.

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 30.

31. Mr. Gor has undergone two days of sworn deposition testimony at the request of Defendant.

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 31.

32. Defendant has paid Plaintiff not more that \$150,000 as a result of the Roof Collapse.

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 32.

33. The amount paid by Defendant to Plaintiff to date is a small fraction of Plaintiff's covered loss under the Policy.

Answer: Defendant denies the allegations contained in Request to Admit Paragraph 33.

34. As a result of Defendant's wrongful refusal to pay the amount due under the Policy, Plaintiff was forced out of business with resulting and substantial additional loss.

### Answer: Defendant denies the allegations contained in Request to Admit Paragraph 34.

35. A true and correct copy of the Denial Letter is attached to the Complaint as Exhibit B.

### <u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 35.

36. In signing and sending to Plaintiff the Denial Letter, Mr. Crapanzano was acting as Defendant's authorized representative.

### <u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 36.

37. In the Denial Letter, Defendant advised Plaintiff the Defendant does "hereby deny coverage" under the Policy.

### Answer: Defendant admits the allegations contained in Request to Admit Paragraph 37.

38. In the Denial Letter, Defendant states as the basis for its denial as follows: "[Plaintiff] has violated the foregoing provisions of the Policy by failing to give costs, values and amounts of the losses claimed; provide books and records for examination; provide a proof of loss containing information requested to investigate the claim; return signed examination answers; and cooperate in the investigation of the claim."

<u>Answer:</u> Defendant admits the allegations contained in Request to Admit Paragraph 38.

39. The statements made by Defendant as quoted in the preceding Request to Admit are false.

<u>Answer:</u> Defendant denies the allegations contained in Request to Admit Paragraph 39.

40. Also in the Denial Letter, which is dated two years and one week after the date of the Roof Collapse, Defendant cites a provision of the Policy stating that, "[N]o one may bring a legal action against ("Defendant") under this Covered Part unless ... the action is brought within two years after the date on which the direct physical loss or damage occurred," and then states that "legal against [Defendant] is precluded because ... the time to file suit has expired."

Answer: Defendant admits the allegations contained in Request to Admit Paragraph 40.

41. The Illinois Insurance Code, 215 ILCS 5/143.1, provides that any period of limitations in a policy such as the Policy is tolled from the date proof of loss is filed until the date the claim is denied in whole or in part.

Answer: Defendant admits the allegations contained in Request to Admit Paragraph 41.

42. Defendant's assertion as contained in the Denial Letter that Plaintiff's right to bring suit on the Policy as of the date of the Denial Letter was false.

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Case No. 08 CV 1738

<u>Answer:</u> Defendant denies the allegations contained in Request to Admit Paragraph 42.

Melvin Funk

Vice President of Property Claims Seneca Insurance Company Inc. 160 Water Street, 16th Floor New York, N.Y. 10038

Dated

•	SWORN STATEMENT IN	PROOF OF LOSS	5/8/06	
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Oct. 12004	·		AGENT AGENT	
DATE EXPIRES	- Course Tres			
the <u>Senera Insura</u>	nce Company, Inc.			
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W. J. Compo	unding d/b/a L. Car	Hon Mertz Co.		
V. J. Strift	7 7	to the property	described under Schedule "A," accordi	ng to the
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leading to water	damage I, or containing the property described, was	ind at the time of loss a	s follows and for no other purpose who	atever:
Occupancy. The building described	, or containing the property described, was	occupied at the time of loss at	s lonowa, and lot the care. Parpers	
fact and	aging operations		·	
at the time of t	he loss the interest of your insured in the	property described therein was	lessee	
Title and interest: At the time of t		No other person or persons ha	ad any interest therein or incumbrance	e thereon,
xcept: Ravi Corporation,	as lessor			
Nav. Corperation			occupancy possession, location or e	хроѕите
Changes: Since the said policy w	as issued there has been no assignment the	ereor, or change of linerest, use	November 30, 2004.	•
f the property described, except	contract packaging oper	76.7 ) 003 (00000 07.	7-00-100-0	
Total Incurance: The total amount	of insurance upon the property described by	this policy was, at the time of	f the loss, \$ 2, 500, 000	- W-1
	of insurance upon the property described by onment attached under Schedule "C," besides to	which there was no policy or other	contract of insurance, written or oral, v	allo or
nvalid.				
The Actual Cash Value of said p	roperty at the time of the loss was			
1110 71010111			\$ 7 100,00	מא מכ
7. The Whole Loss and Damage wa	is		\$ 0, 100,00	
		•	\$ 5 000	o oro
8. Less Amount of Deductible	Market in the control of the control base of the part in the parties and province the base parties and any of base as the bayer	) to a great the property of the state of the sea party of a property of the season of	P 3 800	-, 00
			\$ 1.666,00	00.00
9. The Amount Claimed under the al	ove numbered policy is	en de ser constituent part part part part part part part par	Ψ	
	•			
It to a did not primers but	any act, design or procurement on the par	rt of your insured, or this affian	t; nothing has been done by or with th	e privity or
The said loss did not originate by	any act, design or procurement on the part to violate the conditions of the policy, or re-	nder it void; no articles are ment	tioned herein or in annexed schedules I	as to

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant, notining has been done by or with the pulsy, or render it void; no articles are mentioned herein or in annexed schedules but such consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consents or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such consents or the policy or render it void; no articles are mentioned herein or in annexed schedules but such consents or the policy or render it void; no articles are mentioned herein or in annexed schedules but such as a second or render it void; no articles are mentioned herein or in annexed schedules but such as a second or render it void; no articles are mentioned herein or in annexed schedules but such as a second or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles are mentioned herein or render it void; no articles

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

•	•		
State of THINOIS	•	Vis Compounding	d/b/a L. Cauton M.
		<u>.</u>	
County of DUPAGE		BY: Wishow &	Insured
	the day of DECEMBER	20 0 5	
Subscribed and sworn to before the this	- day or _pc		

Notary Pub

"OFFICIAL SEAL"

GATHY S. BROWN

NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6/13/2009

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime." , 08 04 10:36a MERTZ

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p.1

### SWORN STATEMENT IN PROOF OF LOSS

SWORN STATEMENT	
	ESP 14 024 50
2, 500, 000 MOUNT OF POLICY AT TIME OF LOGO	RBN of ASS.  RICHARD T. SCODRO
MOUT OF POLICY AT THE OF LOSS	AGENCY AT
Ct. / 2013	RICHARD F. SCODE
Det. 1, 2004 DET. 1, 2004 SENECA INSURANCE CO.	THE NEW YORK, N.Y
SENECA INSURANCE	
DETWENT LOW STORTURES IN LINES TO THE STORTURES	
MODI loss, by the above indicated policy of the L. CARLTON MER	
V) Library	to the property described under Schedule "A," according to the
inst loss by "SPECIAL FORM SEE POLICY"  The and conditions of the said policy and all forms, andorsemants, transfers and assignments and conditions of the said policy and all forms, andorsemants, transfers and assignments are conditions of the said policy and all forms, and conditions to the said policy and all forms.	ants attached thereto, a occurred about the hour of o'clock _A_M.
Ties and Drigin: A Tive Street Control of the Street Control of th	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
The saving and origin of the s	THE STATE OF THE S
TO WATER DAMP-OFS  Occupancy: The building described, or containing the property described, was docupt	and for an follows and for no other purpose whatever:
EX-DING TO WATER or containing the property described, was docupt	led at the time of loss as longers, and
Occupancy! The Bonding Control	
CONTRACT PACKAGING OPERATIONS  This and interest: At the time of the loss the interest of your insured in the property. No of	designed invision was
This and interest: At the time of the loss the interest of your insured in the property	y described therein was therefore therein or incumbrance thereon, there person or persons had any interest therein or incumbrance thereon.
capt: Edy / Continue	or change of interest, use, occupancy, possession, location or exposure
Changes: Since the said policy was issued there has been no assignment increase.	OPERATIONS CATSED ON
of the property described, except	
A A THE STATE OF T	
8. Total legurance: The total amount of insurance upon the properly described by this	paticy was at the time of the tost. 8 2,500,000
F. Yotal Insurance: The total amount of insurance upon the property described by this as more perfecularly specified in the appointment attached under Schedule "C," becides which the invalid.	\$ TO BE DETERMINE
G. The Actual Cash Value of said property at the time of the loss was	And the second s
	100 to the contract of the con
7. The Whole Loss and Damage was 70 2075	\$ 5000
1. Less Amount of Deductible	1000 757
Th DATE	\$ 1,099.751
1. The Amount of the Common of	to anything the privile of
the part of design or procurement on the part of	your insured, or this effect, norming here's or in annexed schedules but such
The cald loss did not originate by any act, design or procurement on the part of the consent of your insured or this affect, to victate the conditions of the policy, or render consent of your insured or this affect, to victate the conditions of the part of any me consent or damped at the time of said loss; no property caved has in any me	ground been connected, and no strempt to decaive the exid company, as to
The cald loss did not originate by any sof, design or procurement on the part of consent of your insured or this afficial, to victate the conditions of the policy, or render as were destroyed or damaged at the time of said loss; no property caved has in any me as were destroyed or damaged at the time of said loss; no property caved has in any me extent of said loss, has in any menner been made. Any other information that may be required.	red will be furnished and considered a period to
extent of said loss, has in sity that the said to said the said	to make nominary to not a walver of any of its rights.
The furnishing of this blank or the preparation of proofs by a representative of the	2 20048 EMOISING COMPANY
tue intinarius	MERT CO.
0 ()	L. CARLTON MERICI
State of	L. CARCTON MERTZ- CE. BY. Washing Ger Insured
Country of COOPE	1
Str	1 20 B 4
Subscribed and swarn to before me into	
William Klender Notary Public	ماسد. و را مرام در د
Lucio la	"Any purson who knowingly and with intent in define up only in- curance company or other person files a statement of claim contain-
"OFFICIAL SEAL"	The same that the same to the
KAREN KERNBAUER	miles a Bendulant insurance and, while
NOTARY PUBLIC STATE OF ILLINOIS	
My Commission Expires 05/15/2008 (OVER)	appies
Wy Gulliniasion	

#### SWURN STATEMENT IN PROOF OF LUSS

	SENECA INSURANCE COMPANY,		14 024 50
2,500,000.00	160 WATER STREET, 16TH FLOO	R	POLICY NUMBER
AMOUNT OF POLICY AT TIME OF LOSS	NEW YORK, NY 10038	Chic	cago, IL
10/01/2003	Claim #:		AGENCY AT
DATE ISSUED	4CCN031	Trav	vis-Pedersen
10/01/2004			AGENT
DATE EXPIRES			
he Seneca Insurance Company 160 Water Street, NY, NY 10038			
time of loss, by the above indicated policy of insurance	you insured	Omillan M	ada Co. and Pavi Co.
time of loss, by the above mulcated policy of	you insured VJ Compounding, Inc d/b/	a L. Canton W	enz. Co., and Navi Co
		614	7 West 65th Street, Chicago, Il 6063
Colleges			under Schedule "A," according to t
inst loss by Collapse ns and conditions of the said policy and all forms, end	orsements, transfers and assignments attached theret	D	o'clock
Time and Origin: A Collapse	loss occurred about	the hour or	
	STATE KIND	والمشمولة المناهم والمناهم	
the 03 day of March 2004	The cause and origin of the said loss were:	Collapse	
the US day of Milator.	_		
		la a follows of	ad for no other numbes whatever
Occupancy: The building described, or containing the	ne property described, was occupied at the time of	loss as lollows, al	nd for the dater purpose treatment
Occupancy. The same a			
anufacturing Facility			
anufacturing Facility  Title and Interest: At the time of the loss the inter	est of your insured in the property described therein	was	toract therein or incumbrance there
Owner	No other person or per	rsons nad any in	terest therein or incumbrance there
Mana	and the second s		
cept None			a reason location or evocation
Changes: Since the said policy was issued there	has been no assignment thereof, or change of interes	st, use, occupano	y, possession, location or exposure
Changes: Since the said policy None			tana ini ang mga mga mga mga mga mga mga mga mga mg
the property described, except None			
			0.500.000.00
Total Insurance: The total amount of insurance upons more particularly specified in the apportionment attached upons.	on the property described by this policy was, at the	time of the loss,	\$ 2,500,000.00
invalid.	as of the lone was		\$
6. The Actual Cash Value of said property at the tir	THE OI THE 1022 ALTO		
			\$
7. The Whole Loss and Damage was	<u> </u>		
		-	\$
B. Less Amount of Deductible			
B. Less Amount of Deduction			
9. The Amount Claimed under the above numbered po	olicy is Advance for building shoring and	d stabilization	\$ 15,000.00
9. The Amount Claimed under the above hambers p		and the second second	
	n or procurement on the part of your insured, or this		has been done by or with the privit
and less did not priginate by any act, design	or procurement on the part of your insured, or this	s amant, nothing	nas peen done by or was the province
The said loss did not originate by any act, design consent of your insured or this affiant, to violate the consent of your insured or this affiant, to violate the consent of said loss.	onditions of the policy, or render it void; no articles at	re mensoned reses	deceive the said company, as to
consent of your insured or this affiant, to violate the co as were destroyed or damaged at the time of said los	s; no property saved has in any manner been concealed	nd considered a pa	art of this proof.
as were destroyed or damaged at the time of said los extent of said loss, has in any manner been made. Any of	other information that may be required will be retributed as		
of the propagation of	proofs by a representative of the above insurance c	company is not a	waiver of any of its rights.
The furnishing of this blank or the preparation or	The state of the s		•
		· / .	
	And the second of the second o	Vishni	1 Lar
State of			
	DV.	VISHNU	1 CAD HININI
County of	<u>D1.</u>	·VISIINV	1000
County of			•
to before me this	day of20		
Subscribed and sworn to before me this			
•	Network Dublic		
	Notary Public		
	y A Capanion "An	y person who know	ingly and with intent to defraud any
witnessed by Gpggg	y sur	was sawmany ar of	ker nerson files a statement of claim
w		any materially false	e information, or conceals for the pur n concerning any fact material there
allt	mis	e o frandriket incur Leaning, intermation	rance act, which is a crime."
Y A The state of t	——————————————————————————————————————	A S TI SERVICINE TWO SE	

(OVER)

#### SWORN STATEMENT IN PROOF OF LOSS

\$ 2,500,000.00 AMOUNT OF POLICY AT TIME OF LOSS	SENECA INSURANCE COMPANY, INC.	ESP 14 024 50
10/01/2003	160 WATER STREET, 16TH FLOOR NEW YORK, NY 10038	POLICY NUMBER
DATE ISSUED	Claim #:	Chicago, IL
10/01/2004	4CCN031	Travis-Pedersen
DATE EXPIRES		AGENT
To the Seneca Insurance Company of 160 Water Street, NY, NY 10038		
At time of loss, by the above indicated policy of inst	urance you insured	
	VJ Compounding, Inc d/b/a L. Cai	
against loss by Collapse	to the property d	6147 West 65th Street, Chicago, II 60638 escribed under Schedule "A," according to the
terms and conditions of the said policy and all forms	s, endorsements, transfers and assignments attached thereto.	and the state of t
1. Time and Origin: A Collapse	loss occurred about the hour	of o'clock M.,
on the 03 day of March	2004 . The cause and origin of the said loss were: Colla	pse
		**************************************
2. Occupancy: The building described, or contain	ning the property described, was occupied at the time of loss as fol	lows, and for no other purpose whatever:
Manufacturing Facility		e e e e e e e e e e e e e e e e e e e
3. Title and interest: At the time of the loss the	interest of your insured in the property described therein was	
Owner	No other person or persons had a	any interest therein or incumbrance thereon,
except: None		
	upon the property described by this policy was, at the time of the	
invalid.		
6. The Actual Cash Value of said property at the	time of the loss was	\$
7. The Whole Loss and Damage was	¥	. <u></u> \$
8. Less Amount of Deductible		\$
The Amount Claimed under the chair auctions	Advance and ColDIO EE L	
9. The Amount Claimed under the above numbered	Advance payment for BI & EE Loss	\$ 50,000.00
consent of your insured or this affiant, to violate the as were destroyed or damaged at the time of said lextent of said loss, has in any manner been made. Any	ign or procurement on the part of your insured, or this affiant; nothiconditions of the policy, or render it void; no articles are mentioned hoss; no property saved has in any manner been concealed, and no attempy other information that may be required will be furnished and considered a	erein or in annexed schedules but such at to deceive the said company, as to part of this proof.
The furnishing of this blank or the preparation of	of proofs by a representative of the above insurance company is not	a waiver of any of its rights.
State of	_ Vishn	w Lar
County of	BY: VISHA	NU 60R 4/01/04 Insured
Subscribed and sworn to before me this	day of20	
	Notary Public _	
	1 (0000000	

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime."

(OVER)